CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~627~~. 240.

JOHN W. BALLMANN, APPELLANT,

vs.

VIVIAN J. FAGIN, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF OHIO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED APRIL 24, 1905.

(19,727.)

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1 THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } ss:

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April being also the fourth day of that month, in the year of our Lord, one thousand nine hundred and five and of the American Independence, the one hundred and twenty-ninth:

Present: The Honorable Horace H. Lurton, judge.

Among the proceedings had were the following, to-wit:

In the Matter of JOHN W. BALLMAN. *Habeas Corpus.*

Be it remembered, that heretofore, to-wit: on the 10th day of April, in the year of our Lord one thousand nine hundred and five, there was filed in the clerk's office a petition for writ of *habeas corpus*, which was clothed in the words and figures following, to-wit:

Petition for Writ of *Habeas Corpus.*

In the Matter of JOHN W. BALLMANN.

The petitioner, John W. Ballmann shows to the court:

That on April 7th, 1905, he was served with a subpoena to appear before the grand jury of the district court of the United States for the southern district of Ohio, western division, to give testimony in a certain matter then under investigation and pending before
2 said grand jury, and was ordered by said subpœna to produce any cash book, ledger, letter press copy books, and all sheets showing transactions under the name of A. Smith and A. Johnson during the months of December, 1904, and January and February, 1905. In obedience to said subpœna your petitioner did appear before said grand jury, and being duly sworn, testified that he did not have any of the books or papers called for by said subpœna in his possession or under his control.

On April 8, 1905, said grand jury represented to said district court that your petitioner had wilfully failed and refused to produce a cash book required to be produced by said subpœna, and also that your petitioner had refused to answer the following questions propounded by said grand jury:

"(*a.*) State what on account No. 140 sheet No. 1, on this big ledger now in use in your business, these figures under the word 'folio,' on the debit side of the account, to-wit: No. 349, 349, 349, 349, 349, and 351 refer to.

(*b.*) Do not these figures 349, in your handwriting, on account No. 140, refer to the folios in your cash book in use in your business in January, 1905?"

And said grand jury represented that your petitioner was in contempt of court.

Thereupon said court on April 3, 1905, entered the following order:

"The charges of contempt presented by the grand jury upon the eighth day of April, 1905, came on to be heard upon the evidence and the argument of counsel, and after due consideration the court finds that the said John W. Ballman is guilty of contempt of the process and orders of this court, as charged in said information filed by said grand jury, in the following particulars, to-wit:

First. That the said John W. Ballman has knowingly failed and refused to produce to and before said grand jury a certain cash book used by him in the conduct of his business, and which said cash book is in his possession or under his control.

Second. That the said John W. Ballman has wilfully refused to answer before said grand jury certain questions material to an examination pending before said grand jury, with reference to said cash book, as is specifically charged in the information filed against him.

Wherefore, it is considered, ordered and adjudged by the court that said John W. Ballman produce the said cash book and answer the questions set out in said charges of contempt at twelve o'clock noon, Monday, April tenth, 1905, before said grand jury, and
3 in default thereof that he be committed to and confined within the jail of Miami county, at Troy, Ohio, until he complies with the order of this court, or is discharged by due process of law."

In pursuance of said last mentioned order your petitioner appeared before the grand jury and made the following answer:

"I have not now, and neither at the time of nor at any time since the service of the first subpœna upon me in this matter have I had in my possession or under my custody or control the book referred to in the order of the court entered on April 8, 1905, or any book showing transactions under the name of A. Smith or A. Johnson, and am unable to produce the same.

I decline to answer the questions contained in said order of April 8, 1905, on the ground that it might tend to criminate me, and in this connection I produce a copy of a petition filed against me and others by Emanuel Oppenheimer in the court of common pleas of Hamilton county, being case No. 126824, and I state that there are many other actions of the same kind pending against me."

The grand jury reported said answer to the court, and thereupon the court entered an order committing your petitioner to the custody of Vivian J. Fagin, marshal of this court, to be taken to and confined in the jail of Miami county, at Troy, Ohio, until your petitioner complies with said order of April 8, 1905.

Your petitioner states that said order of April 8, 1905, was made without any lawful evidence that your petitioner had the cash book therein referred to in his possession or under his control, and is illegal and void and beyond the jurisdiction of said court, and that said order committing your petitioner is illegal and void and beyond the jurisdiction of said court and in contravention of the fourth amendment and the fifth amendment of the Constitution of the United States, and your petitioner is held in custody and deprived of his liberty in violation of said provisions of the Constitution of the United States.

Wherefore your petitioner prays that a writ of *habeas corpus* may issue from this honorable court directed to the said Vivian J. Fagin, United States marshal as aforesaid, and that the cause of said
4 detention and restraint be inquired into, and upon the hearing of said cause your petitioner may be released and discharged from said unlawful custody and imprisonment and restored to his liberty.

JOHN W. BALLMANN.

STATE OF OHIO, }
Hamilton County, } *ss:*

John W. Ballman, being first duly sworn, makes oath and says that the facts and statements contained in his foregoing petition are true as he believes.

JOHN W. BALLMANN.

Sworn to before me and subscribed in my presence this 10th day of April, 1905.

BEN B. NELSON,
[SEAL.] Notary Public, Hamilton County, Ohio

And afterwards, to-wit: on the 10th day of April, A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry, Journal 8, Page 32.

This day came John W. Ballman and presented his petition for a writ of *habeas corpus;* on consideration whereof, it is ordered by the court that a writ issue as prayed, returnable on April 12, 1905, at 9:30 o'clock a. m. and that the petitioner be admitted to bail in the sum of $5000 to answer the order of this court.

And thereupon there was issued out of the clerk's office of said court our certain writ of *habeas corpus* in this cause directed to the marshal of said district and against the said defendant, which
5 said writ is clothed in the words and figures following to-wit:

Writ of *Habeas Corpus.*

UNITED STATES OF AMERICA,
Western Division of the Southern District of Ohio.

To Vivian J. Fagin, United States marshal of the southern district of Ohio:

We command you that the body of John W. Ballmann, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before Hon. Horace H. Lurton, judge of our circuit court of the United States, within and for the division and district aforesaid at the court rooms in the city of Cincinnati, Ohio, at 9:30 o'clock a. m. April 12th, 1905, to do and receive all and singular those things which the said Hon. Horace H. Lurton judge of our said circuit court, shall then and there consider of him in this behalf; and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States of America, this tenth day of April, A. D. 1905.

Attest:

[SEAL.]

B. R. COWEN, Clerk,
By ROBERT C. GEORGI, Deputy.

And afterwards, to-wit: on the 10th day of April A. D. 1905, a recognizance was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

Recognizance for Appearance Before said Court.

6 THE UNITED STATES OF AMERICA,
Southern District of Ohio, *ss:*

Be it remembered, that on the tenth day of April A. D. 1905, before me, Benjamin R. Cowen, clerk of the United States circuit court, within and for the district aforesaid, duly appointed as such by the said court personally came John W. Ballman, as principal and George H. Yeager and Robert J. O'Brien as sureties, and jointly and severally acknowledged themselves to owe to the United States of America in the sum of five thousand dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such, that if the said John W. Ballman shall personally appear before the circuit court of the United States, in and for the district aforesaid, at Cincinnati, Ohio, on the 12th day of April A. D. 1905, at 9:30 o'clock a. m. and then and there abide the further order of said court, and not depart with-

out leave thereof; then this recognizance to be void; otherwise to remain in full force and virtue.

JOHN W. BALLMANN. [SEAL.]
GEORGE H. YEAGER. [SEAL.]
ROBERT J. O'BRIEN. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

B. R. COWEN,
[SEAL.] Clerk U. S. Circuit Court, Southern District of Ohio,
By ROBERT C. GEORGI, Deputy.

7 UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

I, George H. Yearger, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name, situate in the county of Hamilton in said district.

GEORGE H. YEAGER.

Sworn to before me the tenth day of April 1905.

ROBERT C. GEORGI, Deputy,
[SEAL.] Clerk U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, ss:

I Robert J. O'Brien one of the sureties above named, do solemnly swear that after paying my just debts and liabilities, I am worth ten thousand dollars in real estate in my own name, situate in the county of Hamilton in said district.

ROBERT J. O'BRIEN.

Sworn to before me the tenth day of April 1905.

ROBERT C. GEORGI,
[SEAL.] Deputy Clerk U. S. Circuit Court, S. D. O.

And afterwards, to-wit: but on the same day a certified copy of the order herein was delivered to the marshal of the southern district of Ohio, which said order is clothed in the words and figures following, to-wit:

8 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America,

begun and had in the court rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April being also the fourth day of that month, in the year of our Lord, one thousand nine hundred and five, and of the American Independence, the one hundred and twenty-ninth.

Present: The Honorable Horace H. Lurton, judge.

On Monday the 10th day of April A. D. 1905. Among the proceedings had were the following, to-wit:

In re JOHN W. BALLMAN, *Ex Parte.* 6007.

This day came John W. Ballman and presented his petition for a writ of *habeas corpus;* on consideration whereof, it is ordered by the court that a writ issue as prayed returnable on April 12, 1905, at 9.30 o'clock a. m. and that the petitioner be admitted to bail in the sum of $5,000 to answer the order of the court.

9 THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } ss:

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the district and division aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at the city of Cincinnati Ohio, this 10th day of April A. D. 1905.

[SEAL.]

B. R. COWEN, Clerk.
By ROBERT C. GEORGI,
Deputy Clerk.

And afterwards, to-wit: on the 10th day of April A. D. 1905. came the marshal of said district to whom said order was in form directed and returned the same into the clerk's office of the court aforesaid with his proceedings endorsed thereon, clothed in the words and figures following, to-wit:

Marshal's Return.

APRIL 10TH, 1905.

Received this order of court at Cincinnati, O. on April 10th, 1905 Pursuant to this order of court within named John W. Ballman, was released from custody on this date upon filing a sufficient bond, with the clerk as herein provided.

V. J. FAGIN, Marshal.

Fee 50.

And afterwards, to-wit: on the 12th day of April A. D. 1905 came the marshal to whom said writ of *habeas corpus* was in form directed and returned the same into the clerk's office of said court with his proceedings endorsed thereon, clothed in the words and figures following, to-wit:

CINCINNATI, O., April 12, 1905—9:30 a. m.

Received this writ at Cincinnati, Ohio, on the 10th day of April 1905, and pursuant to mandate contained therein, I have the body of the within named John W. Ballman now before the Honor-
10 able Horace H. Lurton, judge of the circuit court of the United States, western division, southern district of Ohio, at Cincinnati.

V. J. FAGIN,
U. S. Marshal, S. D. O.

Fees.

1 service $2.00

And afterwards, to-wit: on the 12th day of April A. D. 1905. an answer was filed in the clerk's office of said court clothed in the words and figures to-wit:

Answer.

In the Matter of JOHN W. BALLMAN.

Answer.

Now comes Vivian J. Fagin, United States marshal for the southern district of Ohio, and produces in open court the body of John W. Ballmann by virtue of and in accordance with the order of this court made on April 10th, 1905.

The said Vivian J. Fagin, marshal as aforesaid, by way of return and as answer, and for the purpose of showing the true cause of the detention of the said John W. Ballman, says as follows:—

That in obedience to a certain subpœna issued for said John W. Ballman on the seventh day of April, 1905, to appear before the grand jury for that term then in session, and which said subpœna required the said John W. Ballman to produce a cash book, ledger, letter press copy books and all sheets showing transactions under the name of A. Smith and A. Johnson during months of December, 1904, and January and February, 1905, appeared before said grand jury upon the seventh day of April, 1905, and gave certain testimony, but the said John W. Ballmann failed and refused to pro-
duce a certain book known as a cash book, and employed by
11 him in the conduct of his business.

That thereupon the grand jury in writing, on said day, informed the Honorable A. C. Thompson, judge of the United States district court, of the said refusal of said John W. Ballman to pro-

duce said book, which book was then and there material to an investigation then pending before said grand jury into an alleged violation of the United States banking laws.

That thereupon said John W. Ballmann voluntarily appeared in open court, and also by his counsel, and in open court the court made order that the said John W. Ballman forthwith produce all books and papers pertaining to the business in which he is engaged, whether as an employer or manager or proprietor, and all books and papers within his control.

That the said John W. Ballmann on the eighth day of April, 1905, appeared as a witness before said grand jury and failed and refused to produce a certain cash book, and employed in the conduct of his business, which said book was material to the investigation aforesaid, and which said book was included in the order of the court made on April 7th.

And the said John W. Ballmann being present before said grand jury then and there refused to answer certain questions propounded to him, and which were material to said investigation, which said questions are as follows:

(*a.*) State what on account No. 140, sheet No. 1, on this big ledger now in use in your business, these figures under the word "folio," on the debit side of the account, to-wit: 349, 349, 349, 349, 349, and 351, refer to?

12 (*b.*) Do not these figures 349, in your handwriting, on account No. 140, refer to the folios in your cash book in use in your business in January, 1905?

And thereupon the said grand jury preferred charges of contempt, in writing, against said John W. Ballmann and filed the same in said district court, for that he had refused to produce said book and had refused and declined to answer said questions.

And thereupon the said John W. Ballman voluntarily appeared in open court, in person and by counsel, and the court proceeded to hear the said charges and the evidence of the witnesses following, to-wit: George F. Dieterle, foreman of the grand jury; Thomas J. Clements; Elmer E. Hunt, and Frank Kramer, and other evidence and a certain ledger of said John W. Ballman was offered in evidence and submitted to the court bearing upon said charges.

And thereupon, and after due consideration, the court rendered judgment, finding that the said John W. Ballman, is guilty of contempt of the process and orders of this court, as charged in said information filed by said grand jury, in the following particulars, to-wit:

First. That said John W. Ballman has knowingly failed and refused to produce to and before said grand jury a certain cash book used by him in the conduct of his business, and which said book is in his possession or under his control.

Second. That the said John W. Ballman has wilfully refused to answer before said grand jury certain questions material to an examination pending before said grand jury, with reference to said cash

book, as is specifically charged in the information filed against him.

13 And it was thereupon ordered and adjudged by the court "that said John W. Ballman produce the cash book and answer the questions set out in said charges of contempt, at twelve o'clock noon, Monday, April 10th, 1905, before said grand jury, and in default thereof that he be committed and confined within the jail of Miami county, at Troy, Ohio, until he complies with the order of this court or is discharged by due process of law."

That on the 10th day of April, 1905, said John W. Ballman appeared before said grand jury but failed and refused to produce the said cash book and declined to answer the said questions, as more fully appears by the report of said proceedings filed in said district court by said grand jury.

And thereupon the court ordered that said John W. Ballman, "be taken into custody by the marshal and that he be confined and imprisoned within the jail of the county of Miami, at Troy, Ohio, in accordance with the former order of this court."

And thereupon, on said 10th day of April, 1905, the said court issued to Vivian J. Fagin, marshal as aforesaid, its committment, in words and figures following, to-wit:

District Court of the United States, Southern District of Ohio, Western Division.

In the Matter of JOHN W. BALLMAN. For Contempt.

The defendant John W. Ballman having been tried and found guilty for contempt of court.

Thereupon the court pronounced the following sentence, to-wit:

14 That the said John W. Ballman be imprisoned in the jail of Miami county, Ohio, until he answers the questions and produces the book as he was required.

This, therefore, is to command the marshal of said district to take the body of the said John W. Ballman and commit the same to the said jail of Miami county pursuant to the above sentence.

[SEAL.] Witness, the Honorable Albert C. Thompson, judge of the district court of the United States, this tenth day of April, A. D. 1905, and in the 129th year of the Independence of the United States of America.

Attest: B. R. COWEN,
Clerk of the United States District Court, S. D. O.,
By ROBERT C. GEORGI, Deputy."

And all the said proceedings and orders appear by the records of said district court, a certified copy of which is hereto attached.

STATE OF OHIO, Hamilton County, } ss:

Vivian J. Fagin, United States marshal for the southern district of Ohio, being first duly sworn, says that the facts and allegations above contained are true as he verily believes.

VIVIAN J. FAGIN,
U. S. Marshal, S. D. O.

Sworn to before me and subscribed in my presence this 11th day of April, A. D. 1905.

ROBERT C. GEORGI,
[SEAL.] Deputy Clerk, U. S. District Court, S. D. O.

15 THE UNITED STATES OF AMERICA, Southern District of Ohio, Western Division, } ss:

At a stated term of the district court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court room, at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April being also the fourth day of that month, in the year of our Lord, one thousand nine hundred and five and of the American Independence, the one hundred and twenty-ninth.

Present: The Honorable Albert C. Thompson, judge.

Among the proceedings had were the following, to-wit:

In the Matter of JOHN W. BALLMAN. In Contempt.

Be it remembered, that heretofore, to-wit: on the 7th day of April in the year of our Lord one thousand nine hundred and five, came the grand jury and filed in the clerk's office of said court aforesaid, their certain complaint of contempt, clothed in the words and figures following to-wit:

Complaint of Grand Jury.

CINCINNATI, OHIO, April 7th, 1905.

To the Honorable A. C. Thompson, judge of the U. S. district court for the southern district of Ohio.

SIR: The grand jury for the April term (1905) respectfully represents to your honor and charges that John W. Ballman, is
16 guilty of contempt of court in this, to-wit: That upon the 7th day of April, A. D. 1905, a subpœna in due form was served upon said John W. Ballman, commanding him to appear forthwith before this court and said grand jury, to give testimony

concerning a certain matter then under investigation before said grand jury, and to produce at said time and place the cash books, ledgers, letters press copy books and sheets showing the transactions as conducted under the names of A. Smith and A. Johnson with said John W. Ballman, during the months of December, 1904, and January and February, 1905.

Said John W. Ballman appeared before said grand jury in obedience to said subpœna, but failed, and still fails and refuses to produce before said grand jury the aforesaid books and papers.

The said papers and books are material to an investigation being conducted before said grand jury.

Respectfully submitted,

GEORGE F. DIETERLE, Foreman.

And afterwards, to-wit: on the 7th day of April A. D. 1905 an entry was made upon the journal of said court, clothed in the words and figures following, to-wit:

Journal 9, Page 47.

This day came the grand jury for the April (1905) term and presented its charges of contempt of court against John W. Ballman, in writing signed by the foreman of said grand jury.

Thereupon came into open court the said John W. Ballman, in person and by his counsel, and thereupon the court ordered
17 and directed said John W. Ballman forthwith to produce all books and papers pertaining to the business in which he is engaged, whether as an employer or manager or proprietor—the business with which he is connected—all books and papers within his control.

It is now directed that the above order be entered upon the journals of this court as of April 7, 1905.

And afterwards, to-wit: on the 8th day of April A. D. 1905 the following charges of contempt were filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Charges of Contempt by Grand Jury.

In the Matter of JOHN W. BALLMAN, in Contempt of Court.

To the Honorable A. C. Thompson, judge of the district court, S. D. O.:

The grand jury for the April term (1905) respectfully represents to your honor and charges that John W. Ballman is guilty of contempt of court in this, that

Whereas on the seventh day of April A. D. 1905, said Ballman was duly served with subpœna to appear before this court and this

grand jury, to give testimony in a certain matter then under investigation and pending before said grand jury, and being required by said subpœna to produce a certain cash book in use in his business, did on the seventh day of April and also upon the eighth day of April, 1905, being still under the process of this court, and
18 in contempt of the order of this court, and for the purpose of interfering with the due administration of justice of said court and in said grand jury investigation, wilfully failed and refused to produce said cash book.

2nd. That the said John W. Ballman, on the eighth day of April, 1905, while giving certain testimony before the said grand jury while under process of this court so to do, willfully and knowingly refused to answer certain questions pertaining to said investigation and material thereto, which said questions are as follows:—

(*a.*) State what on account No. 140 sheet No. 1, on this big ledger now in use in your business, these figures under the word, "folio," on the debit side of the account, to-wit: No. 349, 349, 349, 349, 349, and 351 refer to?

(*b.*) Do not these figures 349, in your handwriting, on account No. 140, refer to the folios in your cash book in use in your business in January, 1905?

Wherefore said grand jury charges that said John W. Ballman is in contempt of court, and asks that such proceedings may be had as in the premises are in accordance with the law.

GEORGE F. DIETERLE, *Foreman.*

And afterwards, to-wit: on the 8th day of April A. D. 1905, an entry was made upon the journal of said court, clothed in the words and figures following:—to-wit:

Entry Journal 9, Page 49.

The charges of contempt presented by the grand jury upon the eighth day of April 1905, came on to be heard upon the evidence and the arguments of counsel, and after due consideration the
19 court finds that the said John W. Ballman is guilty of contempt of the process and orders of this court, as charged in said information filed by said grand jury, in the following particulars, to-wit:—

First. That said John W. Ballman has knowingly failed and refused to produce to and before said grand jury a certain cash book used by him in the conduct of his business, and which said cash book is in his possession or under his control.

Second. That the said John W. Ballman has wilfully refused to answer before said grand jury certain questions material to an examination pending before said grand jury, with reference to said cash book, as is specifically charged in the information filed against him.

Wherefore, it is considered, ordered and adjudged by the court that said John W. Ballman produce the said cash book and answer the questions set out in said charges of contempt at twelve o'clock noon, Monday April 10th, 1905, before said grand jury, and in default thereof that he be committed to and confined within the jail of Miami county, at Troy, Ohio, until he complies with the order of this court, or is discharged by due process of law.

And afterwards, to-wit: on the 10th day of April A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures, following:

Entry Journal 9, Page —.

The court having heretofore ordered that John W. Ballman appear before the grand jury for the April term (1905) and produce
20 before said grand jury a cash book referred to in the order of the court, and to answer the questions propounded by the grand jury, as set out in its charges heretofore filed, and it appearing that the said John W. Ballman had failed and refused to produce said book and had declined to answer said questions, it is now ordered that the said John W. Ballman be taken into custody by the marshal, and that he be confined and imprisoned within the jail of the county of Miami, at Troy, Ohio, in accordance with the former order of this court.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division. }

I, Benjamin R. Cowen, clerk of the district court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause as the same appears of record and on file in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Cincinnati, Ohio, this 11th day of April A. D. 1905.

[SEAL.]

B. R. COWEN, Clerk,
By ROBERT C. GEORGI,
Deputy Clerk.

21 And afterwards, to-wit: on the 12th day of April A. D. 1905 a reply was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

Reply.

In re JOHN W. BALLMAN. No. 6007.

Reply.

For reply to the answer of Vivian J. Fagin, marshal:

Your petitioner denies that said subpœna issued on April 7, 1905, required of him to produce any books or papers except those showing transactions under the name of A. Smith or A. Johnson during the months of December, 1904, and January and February, 1905; that in obedience to said subpœna, he appeared before said grand jury and testified that:

"There was no such book to his knowledge."

The following is a copy of said subpœna:

"THE UNITED STATES OF AMERICA, Southern District of Ohio, Western Division, } ss:

The President of the United States of America to John W. Ballman, Greeting:

We command and strictly enjoin you, that laying aside all manner of business and excuses whatsoever, you be and appear in your proper person before the judge of the district court of the United States for the southern district of Ohio, at Cincinnati forthwith, and also that you bring with you and produce at the time and place aforesaid, cash book, ledger, letter press copy book, and all sheets showing transactions under the name of A. Smith and A. Johnson during the months of December 1904, and January and February, 1905, and give testimony on behalf of the United States then and there what you and each of you may know before the grand jury and the truth to say on such matters as may then and there be required and not to depart without the leave of the court of the district attorney, and this you do under the penalty of the law.

22 Witness *that* A. C. Thompson, district judge of the United States this 7th day of April A. D. 1905, and in the 129th year of the Independence of the United States of America.

Attest:—

B. R. COWEN, Clerk,

[L. S.] By ROBERT C. GEORGI, Deputy."

Your petitioner submits that said order entered by said court requiring your petitioner to produce all books and papers pertaining to the business in which he is engaged, whether as an employer, or manager, or proprietor, and all books and papers within his control, is null and void, and beyond the power and jurisdiction of said court, being in contravention of the Constitu-

tion and laws of the United States, and especially of the fourth and fifth amendments of said Constitution.

He denies that on the eighth day of April, he refused to produce before said grand jury any book included in the order of the court made on April seventh.

He says that he was not charged in any of said proceedings with contempt for having refused to produce any book other than the books specified in said subpœna issued April 7, 1905, and that any orders of the court committing him for contempt, for failing to produce any other books are without process of law, and null and void

He says that the charges of contempt preferred by the grand jury on April 8, 1905, were on the ground that he had failed to produce a book called for by said subpœna issued April 7, 1905, and that said order entered by the court upon said charges was made without any evidence that your petitioner had a cash book or
23 other book in his possession or under his control "showing transactions under the name of A. Smith or A. Johnson," and is illegal and void and without due process of law and beyond the jurisdiction of said court.

In compliance with said order entered April 8, your petitioner appeared before the grand jury on April 10, 1905, and made the following answers under oath:

"I have not now, and neither at the time of nor at any time since the service of the first subpœna upon me in this matter have I had in my possession or under my custody or control the book referred to in the order of the court entered on April 8, 1905, or any book showing transactions under the name of A. Smith or A. Johnson, and am unable to produce the same.

I decline to answer the questions contained in said order of April 8, 1905, on the ground that it might tend to criminate me, and in this connection I produce a copy of a petition filed against me and others by Emanuel Oppenheimer in the court of common pleas of Hamilton county, being case No. 126,824, and I state that there are many other actions of the same kind pending against me."

The following is a copy of the petition filed by Emanuel Oppenheimer in the court of common pleas of Hamilton county, Ohio, submitted to the grand jury, and referred to in said answers of your petitioner to said grand jury:

24 Court of Common Pleas, Hamilton County, Ohio.

EMANUEL OPPENHEIMER, Plaintiff,
vs.
THE O'DELL COMPANY, a Corporation Organized under the Laws of Ohio; William J. O'Dell, George H. Stapley, John M. Gorman, William C. Dudley, L. W. Foster, John W. Balman, Thomas F. Shay, Wm. W. Douglas, C. J. O'Dell, Mabel A. Stapley, and Louise O'Dell, Defendants. } Petition.

The plaintiff Emanuel Oppenheimer says that the defendant The O'Dell Company is a corporation organized under the laws of Ohio, and that from the 25th day of May, 1903, to the date hereof in the city of Cincinnati, Ohio, it conducted a scheme of gambling know as a "bucket shop." That the defendants, William O'Dell, George H. Stapley, John M. Gorman, William C. Dudley, L. W. Foster, John W. Ballman, Thomas F. Shay, Wm. W. Douglas, C. J. O'Dell, Mabel A. Stapley, and Louise O'Dell are interested in said scheme of gambling as officers, stockholders, owners, venders and agents thereof, and otherwise. Plaintiff further says that the defendants are indebted to him in the sum of one thousand four hundred and fifty and 37/100 dollars for money expended by him and paid to the defendant The O'Dell Company between the dates of May 25, 1903, and the date hereof. That the said moneys were expended by the plaintiff in and on account of the scheme of
25 chance and in and on account of the scheme of gambling maintained and conducted by the defendant The O'Dell Company.

That the said sum of one thousand four hundred and fifty and 37/100 dollars is the aggregate losses above the winnings which were incurred by the plaintiff by means of bets and wagers upon the market prices of stocks, grains and other commodities and between the plaintiff and the O'Dell Company continuously and almost daily between the dates of May 25, 1903, and the date hereof. That the said series of bets and wagers upon stocks, grains and other commodities constituted the scheme of gambling and of chance known as the bucket shop, above mentioned. That the said sum was won by the O'Dell Company and was paid to it by the plaintiff and was received from the plaintiff by the O'Dell Company. That by reason thereof an action has accrued to plaintiff by virtue of the statutes against gaming in the State of Ohio.

Wherefore the plaintiff prays for judgment against the defendants in the sum of one thousand four hundred and fifty and 37/100 dollars and for exemplary damages in the sum of $500 and for his costs herein, and for all other and proper relief.

CABELL & FREIBERG AND
MOULINIER, BETTMAN & HUNT,
Attorneys for Plaintiff.

Duly verified.

26 The grand jury immediately reported to the court that your petitioner had made said answers to said questions, and thereupon said court, without hearing any evidence, entered the following order, to wit:

"The court having heretofore ordered that John W. Ballman appear before the grand jury for the April term (1905) and produce before said grand jury a cash book referred to in the order of the court, and to answer the questions propounded by the grand jury, as set out in its charges heretofore filed, and it appearing that the said John W. Ballman has failed and refused to produce said book and has declined to answer said questions, it is now ordered that the said John W. Ballman be taken into custody by the marshal, and that he be confined and imprisoned within the jail of the county of Miami, at Troy, Ohio, in accordance with the former order of this court."

And the court issued the commitment set forth in the answer of Vivian J. Fagin, marshal.

Your petitioner says that said order entered on April tenth, and said commitment, are beyond the jurisdiction of said court, and null and void, and in contravention of the Constitution and laws of the United States, and especially of the fourth and fifth amendments of said Constitution.

JOHN W. BALLMANN.

STATE OF OHIO, Hamilton County, } ss:

John W. Ballman, being first duly sworn, says that he is the petitioner in the above entitled cause, and that the facts stated and allegations contained in the foregoing reply are true as he believes.

JOHN W. BALLMANN.

Sworn to before me and in my presence signed this twelfth day of April, 1905.

[SEAL.] J. W. HEINTZMAN,
Notary Public, Ham. Co., O.

27 And afterwards, to-wit: on the 12th day of April A. D. 1905. there was filed in the clerk's office of said court, a transcript of the proceedings had by and before the district court, of the United States within and for the western division in case No. 1840 which transcript is clothed in the words and figures following, to-wit:

28 THE UNITED STATES OF AMERICA, Southern District of Ohio, Western Division, } ss:

At a stated term of the district court of the United States of America, within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of

America, begun and had in the court rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April being also the fourth day of that month, in the year of our Lord, one thousand nine hundred and five and of the American Independence, the one hundred and twenty-ninth.

Present: The Honorable Albert C. Thompson, judge

Among the proceedings had were the following, to-wit:

In the Matter of JOHN W. BALLMAN. In Contempt of Court.

Be it remembered, that heretofore to-wit: on the 7th day of April in the year of our Lord one thousand nine hundred and five, came the grand jury by their foreman and filed in the clerk's office of said court aforesaid their certain complaint, against John W. Ballman, which said complaint is clothed in the words and figures following, to-wit:

Complaint of Grand Jury.

CINCINNATI, O., April 7, 1905.

To the Honorable A. C. Thompson, judge of the U. S. district court for the southern district of Ohio.

29 SIR: The grand jury for the April term (1905) respectfully represents to your honor and charges that John W. Ballman is guilty of contempt of court in this, to-wit: that upon the 7th day of April, A. D. 1905, a subpœna in due form was served upon said John W. Ballmann, commanding him to appear forthwith before this court and said grand jury, to give testimony concerning a certain matter then under investigation before said grand jury, and to produce at said time and place the cash books, ledgers, letter press copy books and sheets showing the transactions as conducted under the name of A. Smith and A. Johnson with said John W. Ballmann, during the months of December, 1904, and January and February, 1905.

Said John W. Ballman appeared before said grand jury in obedience to said subpœna, but failed, and still fails and refuses to produce before said grand jury the aforesaid books and papers.

The said papers and books are material to an investigation being conducted before said grand jury.

Respectfully submitted,

GEORGE F. DIETERLE, Foreman.

30 And afterwards, to-wit: on the 10th day of April, A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 9, Page 47.

This day came the grand jury for the April (1905) term and presented its charges of contempt of court against John W. Ballman, in writing, signed by the foreman of said grand jury.

Thereupon came into open court the said John W. Ballman, in person and by his counsel, and thereupon the court ordered and directed said John W. Ballman forthwith to produce all books and papers pertaining to the business in which he is engaged, whether as an employer or manager or proprietor—the business with which he is connected—all books and papers within his control.

It is now directed that the above order be entered upon the journals of this court as of April 7, 1905.

And afterwards, to-wit: on the 8th day of April A. D. 1905, there was filed in the clerk's office of said court, charges of contempt by grand jury, clothed in the words and figures following, to-wit:

Charges of Contempt by Grand Jury.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of JOHN W. BALLMAN. In Contempt of Court.

31 To the Honorable A. C. Thompson, judge of the U. S. district court, S. D. O.:

The grand jury for the April term (1905) respectfully represents to your honor and charges that John W. Ballman is guilty of contempt of court, in this, that

Whereas on the seventh day of April, A. D. 1905, said Ballman was duly served with subpœna to appear before this court and this grand jury, to give testimony in a certain matter then under investigation and pending before said grand jury, and being required by said subpœna to produce a certain cash book in use in his business, did, on the seventh day of April and also upon the eighth day of April, 1905, being still under the process of this court, and in contempt of the order of this court, and for the purpose of interfering with the due administration of justice of said court and in said grand jury investigation, wilfully fail and refuse to produce said cash book.

2nd. That the said John W. Ballman, on the eighth day of April, 1905, while giving certain testimony before the said grand jury, while under process of this court so to do, wilfully and knowingly refuse to answer certain questions pertaining to said investigation and material thereto, which said questions are as follows:

(*a.*) State what on account No. 140, sheet # 1, on this big ledger now in use in your business, these figures under the word "folio," on the debit side of the account, to-wit: No. 349, 349, 349, 349, 349, and 351 refer to?

(*b.*) Do not these figures 349 in your handwriting, on account No. 140, refer to the folios in your cash book in use in your business in January, 1905?

Wherefore said grand jury charges that said John W. Ballman

is in contempt of court, and asks that such proceedings may
32 be had as in the premises are in accordance with law.
GEORGE F. DIETERLE, Foreman.

And afterwards, to-wit: on the 8th day of April, A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 9, Page 48.

The charges of contempt presented by the grand jury upon the eighth day of April, 1905, came on to be heard upon the evidence and the arguments of counsel, and after due consideration the court finds that the said John W. Ballman is guilty of contempt of the process and orders of this court, as charged in said information filed by said grand jury, in the following particulars, to wit:

First. That the said John W. Ballman has knowingly failed and refused to produce to and before said grand jury a certain cash book used by him in the conduct of his business, and which said cash book is in his possession or under his control.

Second. That said John W. Ballman has wilfully refused to answer before said grand jury certain questions material to an examination pending before said grand jury, with reference to said cash book, as is specifically charged in the information filed against him.

Wherefore, it is considered, ordered and adjudged by the court that said John W. Ballman produce the said cash book and
33 answer the questions set out in said charges of contempt at twelve o'clock, noon, Monday April 10th 1905, before said grand jury, and in default thereof that he be committed to and confined within the jail of Miami county, at Troy, Ohio, until he complies with the order of this court, or is discharged by due process of law.

And afterwards, to wit: on the 8th day of April, A. D. 1905, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry Journal 9, Page 47.

In re JOHN W. BALLMAN.

It is hereby ordered that the said John W. Ballman, give bond in the sum of two thousand five hundred ($2,500.00) dollars for his appearance in this court at twelve o'clock, Monday, April 10th, 1905, to obey the order of this court.

And afterwards, to wit: but on the same day, a recognizance was filed in the clerk's office of said court, which recognizance is clothed in the words and figures following, to wit:

Recognizance.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

Be it remembered, that on this 8th day of April, A. D. 1905, before me, Benjamin R. Cowen, clerk of the United States district court, within and for the district aforesaid, duly appointed as such by the said court, personally came the — John W. Ballman, as principal, and Robert J. O'Brien, as surety, and jointly and severally acknowledged themselves to owe the United States of America in the sum of twenty-five hundred dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such that if the said John W. Ballman shall personally appear before the district court of the United States, in and for the district aforesaid, at Cincinnati, Ohio, on April 10th, 1905, at 12 o'clock, noon, and then and there to testify as a witness before the grand jury, and obey the order of the court, and then and there abide the further order of said court, and not depart without leave thereof, then this recognizance to be void otherwise to remain in full force and virtue.

JOHN W. BALLMAN. [SEAL.]
ROBERT J. O'BRIEN. [SEAL.]

Taken and acknowledged before me on the day and year first above written.

B. R. COWEN,
[SEAL.] Clerk U. S. District Court, Southern District of Ohio.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

I, Robert J. O'Brien, the surety above named, do solemnly swear that after paying my just debts and liabilities, I am worth
34 five thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

ROBERT J. O'BRIEN.

Sworn to before me the 8th day of April, 1905.

B. R. COWEN,
[SEAL.] Clerk U. S. District Court, S. D. O.

And afterwards, to-wit: on the 10th day of April, 1905, came the grand jury in open court, and presented its report to said court, clothed in the words and figures following, to-wit:

Report of Grand Jury.

To the Honorable A. C. Thompson, judge U. S. district court, S. D. O.

DEAR SIR: The grand jury for the April term, 1905, reports that John W. Ballman appeared as a witness before this body April 10th, 1905, at 1.30 o'clock p. m. and failed and refused to produce the cash book, referred to in your honor's order of April 8th 1905. Said witness also refused to answer the questions as specified in the charges against him and referred to in said order of court.

Respectfully, GEORGE F. DIETERLE, Foreman.

And at the same time, and in open court, the said grand jury by its said foreman, George F. Dieterle, and as a part of its said report, presented to said court the following answers in writing made by said witness, John W. Ballmann, in said grand jury room, and to and in the presence of said grand jury, and in response to the questions aforesaid, propounded to him by said grand jury, and which said answers are in the words and figures following, to-wit:

35 Answers.

I have not now, and neither at the time of nor at any time since the service of the first subpœna upon me in this matter have I had in my possession or under my custody or control the book referred to in the order of the court entered on April 8, 1905, or any book showing transactions under the name of A. Smith or A. Johnson, and am unable to produce the same.

I decline to answer the questions contained in said order of April 8, 1905, on the ground that it might tend to criminate me and in this connection I produce copy of a petition filed against me and others by Emanuel Oppenheimer in the court of common pleas of Hamilton county, being case No. 126,824, and I state that there are many other actions of the same kind pending against me.

And at the same time produced to said grand jury a copy of the petition of Emanuel Oppenheimer against the O'Dell Company, John W. Ballman and others, and being cause No. 126,824, pending in the court of common pleas of Hamilton county, Ohio, and which said petition is clothed in the words and figures following, to-wit:

Copy of Petition, Hamilton County, O., Com. Pl. Court.

EMANUEL OPPENHEIMER, Plaintiff,
vs.
THE O'DELL CO., a Corporation Organized under the Laws of Ohio; Wm. J. O'Dell, Geo. H. Stapely, John M. Gorman, Wm. C. Dudley, L. W. Foster, John W. Ballman, Thomas F. Shay, Wm. W. Douglass, C. J. O'Dell, Mabel A. Stapley, and Louise O'Dell, Defendants. } Petition.

The plaintiff, Emanuel Oppenheimer, says that the defendant, The O'Dell Company, is a corporation organized under the laws of Ohio, and that from the 25th day of May, 1903, to the date hereof in the city of Cincinnati, Ohio, it conducted a scheme of gambling known as a "bucket shop."

That the defendants William C. Dudley, L. W. Foster, John W. Ballman, Thomas F. Shay, William W. Douglass, C. J. O'Dell, Mabel A. Stapeley, and Louise O'Dell are interested in said scheme of gambling as officers, stockholders, owners, venders and agents thereof, and otherwise.

Plaintiff further says that the defendants are indebted to him in the sum of one thousand four hundred and fifty and 37/100
36 dollars for money expended by him and paid to the defendant The O'Dell Company between the dates of May 25, 1903, and the date hereof. That the said moneys were expended by the plaintiff in and on account of the scheme of chance and in and on account of the scheme of gambling maintained and conducted by the defendant, The O'Dell Company.

That the said sum of one thousand four hundred and fifty and 37/100 — is the aggregate losses above the winnings which were incurred by the plaintiff by means of bets and wagers upon the market prices of stocks, grains and other commodities made between the plaintiff and the O'Dell Company continuously and almost daily between the dates of May 25, 1903, and the date hereof. That the said series of bets and wagers upon stocks grains and other commodities constituted the scheme of gambling and of chance known as the bucket shop, above mentioned. That the said sum was won by the O'Dell Company and was paid to it by the plaintiff and was received from the plaintiff by the O'Dell Company. That by reason thereof an action has accrued to the plaintiff by virtue of the statutes against gaming in the State of Ohio.

Wherefore plaintiff prays for judgment against the defendants in the sum of one thousand four hundred and fifty and 37/100 dollars and for exemplary damages in the sum of five hundred dollars and for his costs herein, and for all other and proper relief.

CABBELL & FREIBERG &
MOULINER,
BETTMAN & HUNT,
Attorneys for Plaintiff.

STATE OF OHIO, Hamilton County, } ss:

37 A. J. Frieberg, being first duly sworn, say- that he is attorney for Emanuel Oppenheimer plaintiff in the above cause and that the plaintiff is not a resident of Hamilton county, Ohio, and that the facts stated in the above petition are true to the best of the knowledge and belief of the affiant.

A. J. FREIBERG.

Sworn to, etc.

And which said report and said answers and said copy of said petition were directed by said court to be filed in the clerk's office of this court, which was accordingly done.

38 And afterwards, to-wit: on the 10th day of April A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 9, Page 50.

The court having heretofore ordered that John W. Ballman appear before the grand jury for the April term (1905) and produce before said grand jury a cash book referred to in the order of the court, and to answer the questions propounded by the grand jury, as set out in its charge heretofore filed. And it appearing that the said John W. Ballman has failed and refused to produce said book and has declined to answer said questions, it is now ordered that the said John W. Ballman be taken into custody by the marshal, and that he be confined and imprisoned within the jail of the county of Miami, at Troy, Ohio, in accordance with the former order of this court.

And thereupon there was issued out of the clerk's office of the court aforesaid our certain writ of final commitment in this cause, directed to the marshal of said district, which said writ is clothed in the words and figures following, to-wit:

Writ of Final Commitment.

District Court of the United States, Southern District of Ohio, Western Division.

39 In the Matter of JOHN W. BALLMAN. For Contempt.

The defendant John W. Ballman, having been tried and found guilty for contempt of court,

Thereupon the court pronounced the following sentence, to-wit: That the said John W. Ballman, be imprisoned in the jail of Miami

county, Ohio, until he answer the questions and produces the book as he was required.

This, therefore, is to command the marshal of said district to take the body of the said John W. Ballman and commit the same to the said jail of Miami county pursuant to the above sentence.

Witness, the Honorable Albert C. Thompson, judge of the district court of the United States, this tenth day of April, A. D. 1905, and in the 129th year of the Independence of the United States of America.

Attest:

B. R. COWEN,
Clerk of the United States District Court, S. D. O.,
[SEAL.] By ROBERT C. GEORGI, Deputy.

And afterwards, to-wit: on the 12th day of April A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 9, Page 53.

This day came the said John W. Ballman, and presented his bill of exceptions and the same being examined and found to be true is hereby allowed, signed, sealed and ordered to be and the same is hereby made part of the record of this cause and filed as provided by law.

And afterwards, to-wit: on the 12th day of April, A. D. 1905, a bill of exceptions was filed in the clerk's office of said court clothed in the words and figures following, to wit:

Bill of Exceptions.

APRIL 8, 1905.

United States Court Room.

In the Matter of the Contempt Proceedings Against JOHN W. BALLMAN.

Before the Honorable Albert C. Thompson, District Judge.

Be it remembered, that at the hearing of the proceedings in contempt against John W. Ballman before the Honorable Albert C. Thompson, district judge on April 8th, 1905, the following proceedings were had.

Mr. BALLMAN: Might I ask delay until Mr. Shay, my counsel, comes in? He was in the building, and stepped out. He has been sent for.

The COURT: The grand jurors may retire to their rooms and I will hear this application as soon as Mr. Ballman can get his coun-

sel here. The district attorney will have the witness he intends to call in support of this application, present.

Mr. McPherson: Our witnesses are here, your honor.

41 The Court: Are any of them the members of the grand jury?

Mr. McPherson: Yes, I have called one or two members of the grand jury.

(At this time Mr. Shay appears before the court and requests that tho charges made against John W. Ballman be shown to him. The court grants time for Mr. Shay to examine the complaint.)

Mr. Shay: I demand in this case, an information specific, and I want time, also, to prepare, and get my witnesses in this court.

The Court: What witnesses? Mr. Ballman is here.

Mr. Shay: I understand, if the court please, that tho charge is made here that this man had a cash book, that he failed to produce.

The Court: The first charge is that he refused to produce the cash book, and the second charge is that he refused to answer certain questions. Now, the grand jury is in session, and while I desire to give him every opportunity to be fully heard in this matter, it cannot be delayed. The Government may proceed with its testimony, if it has any on this first proposition?

Mr. Shay: On the first proposition, we desire, if your honor please, that we shall be allowed a reasonable time—say until this afternoon.

The Court: For what purpose?

Mr. Shay: For the purpose of preparing the law in this case; for the purpose of showing the court that we are not guilty of any contempt and that the act charged against us is not a violation of the statute and that we are standing here simply upon our rights.

42 The Court: I am not able to see that there is any occasion for delay. I will hear the evidence first. Then I will hear what counsel have to say upon the question of the law. I see no occasion for a postponement until this afternoon. On the second proposition it is not necessary to introduce evidence. It is charged that he refused to answer questions which are set forth. Now, it is for the court to say under the law whether he should be required to answer those questions.—Upon the other proposition, I will hear evidence.

Thereupon, George F. Dieterle, being called by the Government and duly sworn, testified as follows:

By Mr. Darby:

Q. Your full name is George F. Dieterle?

A. George F. Dieterle.

Q. You are the foreman of the grand jury for the April term of this court?

A. I am.

Q. Was John W. Ballman a witness before that grand jury.
A. He was.
Q. Will you look at this young man just sitting down and say whether you recognize him?
A. That is Mr. Ballman, yes sir.
Q. Will you state whether or not certain questions were asked of him before the grand jury on this morning?
A. There were.

43 Q. The COURT: I took it for granted that those questions would be admitted, but you may prove them.
Mr. SHAY: They will be admitted.
The COURT: And that he refused to answer.

Q. Mr. Dieterle, state whether or not on yesterday, in the investigation before the grand jury, Mr. Ballman produced a cash book which was called for by his subpœna?
A. He did not.
Q. Will you state whether or not, on this morning, before said grand jury, he produced said cash book which he was called upon to produce, in his subpœna?
A. He did not.
Q. Will you state what he said with reference to the cash book being used in his business, during the months of December, 1904, and January and February and March, and up to April 6th, 1905?

Mr. SHAY: To that question, I object, if the court please, as being incompetent and bearing no relation to any charge that was preferred in this specification.
Mr. DARBY: The specification does not set out that question exactly, but it does charge him with failing to produce a certain book. I propose to show he was inquired of with reference to that book, and that his answers were in reference to it.
The COURT: The question may be answered.
Counsel for respondent excepts to the ruling.

By Mr. DARBY:

Q. (Question read.)
A. The question was asked, and he said there was no such book to his knowledge.
Q. Did that answer pertain to the entire question I put?

Above question objected to as incompetent.

44 Cross-examination waived.

Also, THOMAS J. CLEMENTS, being called by the Government and duly sworn, testified as follows:

By Mr. DARBY:

Q. Mr. Clements, what is your full name?
A. Thomas Joseph Clements.
Q. Where do you live?
A. 2224 Hester street, Walnut Hills.
Q. What is your business?
A. I am a broker.
Q. In whose employ?
A. John W. Ballman's.
Q. The young man who is charged here?
A. Yes.
Q. Were you in his employ during the months of December, 1904, January, February, March and up to the present date in April, 1905.
A. Yes.
Q. Will you state to the court whether or not in December, 1904, and January, February, March and April up to the present, there was in use in that office and in the conduct of Mr. Ballman's business a cash book?
A. I used a cash book for my own personal use; I had——

The COURT: Just answer the question. Listen to the questions and answer them responsively.

Q. Was there a cash book used there?
A. No, not by me.
Q. Was a cash book used in the conduct of that business of Mr. Ballman's?
A. Yes, sir.
45 Q. You say there was?
A. Yes; it was used by myself personally.

Mr. MCPHERSON: You are the bookkeeper for him?
Mr. SHAY: Just a moment—one at a time.
The COURT: Don't interrupt the examination.

Q. Will you state when you saw that cash book last in the office of Mr. Ballman?
A. Monday.
Q. Of what week?
A. This week.
Q. What was that date? Here is a calendar—will you see?
A. It was the 3rd.
Q. April 3rd, 1905?
A. Yes.
Q. You may state whether or not that book was used by you, at that time and before that time, for the purpose of posting the ledger in that office?

The above question is objected to as being incompetent, irrelevant and leading and as not pertaining to the matter set forth in the complaint; the court overruled the objection, to which ruling of the court counsel for respondent at the time excepted.

Q. (Question read.)
A. Yes sir.
Q. Will you state whether or not the ledger account which you posted up to and including March 6th—or April 6th, 1905, shows the folio of that cash book?

Above question is objected to as incompetent, irrelevant and leading, and as not relevant to the issues involved; the court overruled the objection, to which ruling of the court counsel for respondent at the time excepted.

46 Q. Answer that question, please?
A. Was there any folios?
Q. (Question read.)
A. Well, it was from the slips.—No, it was from slips.
The COURT: Do you understand the question? Read the question to him.
Q. (Question read.)
The COURT: Did the ledger show the folios of that cash book?
A. Up to the 3rd.
Q. And prior to that time, in your handwriting?

Above question is objected to as incompetent and not pertinent to the issue. The court overruled the objection, to which ruling of the court, counsel for the respondent at the time excepted.

A. Previous to the 3rd, there was some posting in there.
Q. From this cash book?
A. From this cash book which I, myself, done personally.

Mr. SHAY: I wish to have the court make the direction that the stenographer may note the objection each time, so that I may not be required to interrupt with objection, to repeat the objection to each question.
The COURT: I want you, Mr. Shay, to have every objection noted that you see proper to make, with whatever statement you desire to make. Your objection will be entered and your exception noted.

Q. You say that up to April 3rd, you posted this ledger from that cash book?
A. I don't know if it was the 3rd; but I wouldn't be positive if it was the third, or not, because my memory there is not ex-
47 actly clear.
Q. I will ask you to look at this account (indicating in book) just look at No. 133, and I will ask you if up to and including April 4th, those entries are not made from that cash book, and if the folio does not appear there as 382, for that date, in your handwriting?
A. That is 382.

Q. That is the folio of the cash book?

A. No, it is not taken from the cash book.

Q. That is the folio of the cash book, is it?

A. No, sir; it is not; that 382 is a memorandum taken off the slip.

Mr. SHAY: What date is that?

Q. April 4th Now, look at April 3rd, and see if that is not in your handwriting, and if that folio is not given there as 382, and if that was not taken from the cash book?

A. I don't think that was taken from the cash book, either.

Q. Didn't you testify before the grand jury last evening?

A. Yes, sir.

Q. That these figures under the word "folio," were taken from that cash book and represented the folio in that cash book in use in Mr. Ballman's office?

A. Yes, and I also said——

Q. But you did say that?

The COURT: Let him answer.

A. I also said there was some of them taken from slips; when we didn't put them in the cash book; we put them on slips; some are taken from slips; and numbered; some are cash book and some are slips.

The COURT: The point of this question was, did you testify
48 before the grand jury that these two items of April 3rd and 4th were taken from the cash book?

A. No sir; not those particular items.

Q. Mr. Clements, this cash book contained what with reference to Mr. Ballman's office? Mr. Ballman's business?

A. The cash book that I kept—if I may be allowed to explain.

Q. The cash book you are referring to—to which book do you refer?

A. Was the cash book I kept myself.

The COURT: Is that the one referred to in the book there?

A. I put some in there, yes sir.

The COURT: That is the one he is calling your attention to—that one that appears in this ledger? Put a more specific question.

Q. Will you state what the book contained, with reference to the daily transactions in Mr. Ballman's business, during December, 1904, January, February, March and April, 1905?

Above question is objected to as incompetent and irrelevant; the court overruled the objection, to which ruling of the court counsel for respondent at the time excepted.

A. What reference that cash book had?

Q. No; what that book showed—what transactions appeared upon that book, in Mr. Ballman's business?

A. I can't remember what appeared upon that book during those months.

Q. In a general way what were the transactions contained in that book?

A. Some people paid me money, and I credited it; when I paid some people, I put that on there; but I didn't always fix up the cash; sometimes it was on slips.

49 The COURT: You used this cash book sometimes in making entries in the ledger?

A. Yes, sir.

By the COURT:

Q. And do you mean to say you noted that in the ledger?

A. Yes, sir.

Q. How? Point out one entry of that kind?

A. January 9th, by cash, $1488.33, and the number "338."

Q. What does "338" mean?

A. That means the page.

Q. Of what? Of the cash book?

A. If there was a cash book, or if it was a slip.

Q. It was the page of the cash book?

A. Or the slip.

Q. Would the slip have such a number?

A. We numbered them; Mr. Hunt numbered slips,—the slips were numbered—sometimes we would number them. The slips were numbered mostly by Mr. Hunt.

By Mr. DARBY:

Q. But the slips were not kept, were they?

A. No, sir.

Q. But the cash book was?

A. I haven't seen the cash book; I haven't——

Q. The cash book was kept, as far as your knowledge goes, up to last Monday?

A. The book was there.

Q. That is what I mean.

The COURT: I want you, Mr. Clements, to listen to these questions and give direct, straightforward answers—responsive answers.

A. Yes, sir.

50 —. That is what the court expects of you.

A. Yes, sir.

Q. Now, I want to call your attention to this page, account 140, and ask you to state in whose handwriting those items are under date of January 26, 1905?

A. Those there? (Indicating.)

Q. Yes.

A. Those are not my handwriting.

Q. I didn't ask you that—I asked you in whose handwriting they were?

A. I will have to look for a moment, to see—I think that is Hunt's handwriting—that is Hunt's.

Q. Don't you know, as a matter of fact, and didn't you testify before the grand jury last night that that is Mr. Ballman's own handwriting?

A. Yes, that is Mr. Ballman's.

Q. What about this one above—the one I called your attention to a moment ago—is there any question about that in your mind?

A. No; those are Mr. Ballman's I am pretty sure.

Q. You know they are not Hunt's?

A. They are Mr. Ballman's I think.

Q. What does those figures under the head of "folio," 349, refer to?

—. Well, now Mr. Ballman entered those; I don't know whether he took—I suppose he took them from the slips——

The COURT: Not what you suppose—tell us what you know; if you don't know, say so.

A. As I say, I don't know; Mr. Ballman entered those.

Q. Is that in your handwriting, just below the items of January 30, and 31?

A. Yes sir.

Q. The figures, 349, and 351, under the word "folio" refer to what there?

51 A. I don't know if they were taken from the cash book or from the slips.

Q. The cash book was in use at that time, was it?

A. January 30—I used one around there.

Cross-examination.

By Mr. SHAY:

Q. You say that this cash book that you speak of, was your individual property?

A. Yes.

Q. Can you swear that ever was in the hands of John W. Ballman?

A. I can't swear that it ever was.

Q. Do you know that he had any knowledge of its existence?

A. No.

By Mr. DARBY:

Q. How long have you been working for Mr. Ballman?

A. About five years and a half.

Q. How long have you been his bookkeeper?

A. Well, I don't know as I am exactly bookkeeper, I worked on the books after I was there about three years, as far as what little bookkeeping there was, in making statement; I don't call myself

a bookkeeper, I call myself a general clerk, most all the time on the outside.

Q. You were under salary from Mr. Ballman, were you?

A. Yes, sir.

52 Also FRANK M. KRAMER, being called by the Government and duly sworn, testified as follows:

By Mr. DARBY:

Q. Your full name please?

A. Frank Marcus Kramer.

Q. Where do you live?

A. 409 East 6th street, Newport.

Q. What is your business?

A. Standing at the grain-board board marker.

Q. At what board?

A. John W. Ballman's office.

Q. How long have you been engaged in Mr. Ballman's employ?

A. About three years.

Q. Were you engaged there continuously during the last four or five months?

A. I was.

Q. When did you see the cash book in use in that business last?

A. I can't say, as I don't know which—under what name they go.

Q. There was a book there, known as the cash book, was there not?

A. I think there was.

Q. When did you last see that book?

A. About Monday.

Q. Monday of this week, do you mean?

A. Yes.

Q. Where did you see it at that time?

A. Why lying on the desk.

Q. What desk?

A. The desk in the office.

53 Q. What desk?

A. Why, the one in the front part of our office.

Q. Whose desk was that?

A. The bookkeeper's desk.

Q. That was there, in sight of all persons coming and going, was it?

Above question is objected to, and the court rules the witness may answer, to which ruling counsel for respondent excepted.

Q. Was it, or not, in sight of all persons coming and going?

A. They could—if they would look in the window.

Q. I mean people going inside of that office? Mr. Ballman was in and about, in and out of the office how much during the day?

A. I can't say.

Q. Was he there every day?
A. I can't say.
Q. Was he there every day?
A. I can't say.
The COURT: Why can't you say?
A. Why, as I was out on the board, I see very little of the clerks in the office.
The COURT: Where is your place?
A. Outside of the office.
Q. Where?
A. Outside of the office room.
Q. In the building?
A. Oh, yes.
Q. What do you do?
A. Mark the Chicago grain board.
Q. You know Mr. Ballman?
A. Certainly.
Q. You see him coming—come in and go out?
54 A. I did.
Q. You see him go into that office and come out of it?
A. I have.
Q. Every day?
A. Not every day; I don't see Mr. Ballman every day.
Q. About how often?
A. Maybe once or twice in a whole day.
Q. Once or twice in a whole day? He is away from home sometimes?
A. Yes.
Q. When he is at home, at his office, is he there in that office?
A. Well, he is in and out at all times of the day, and all that I see of him is not very often.

By Mr. DARBY:

Q. That book was the record of what transactions in the office?
A. I cannot say.
Q. Why not?
A. Why, as I got to see very little of the book of the office as it were just what concerned me and that concerned me nothing whatever, as I see nothing of it, as I say—of the entries in that book.
Q. Did not that book, to your knowledge, contain the transactions of that office, as they occurred from day to day?
A. I don't know.
Q. To your knowledge, I say, did not that book contain those transactions?
A. To my knowledge, I would say, I don't know, but it might.
Q. Did you not testify before the grand jury on your first examination in this matter, that the book did contain the transactions that were done in that office?
A. No.

55 Q. And that they were copied there from certain slips by the bookkeeper, Mr. Clements, and then the entries carried from the cash book into the ledger? Wasn't that your testimony before the grand jury two or three days ago?

A. I say that the entries were made, as far as I saw from the outside of the window.

Q. Of what window?

A. Outside of the window of the office.

Q. Outside of the building?

A. No, no.

Mr. McPherson: The office is separated by glass partitions or glass windows.

Q. That is, you saw entries made in that book, from wherever you were in that office, by whom?

A. No, not all the time, only the time when I would walk up to the window.

Q. By whom were those entries made in that book then?

A. When I saw it, it was Hunt and Mr. Ballman.

Q. And whom else?

A. Mr. Clements.

Q. You would see each of those three persons make entries in and use that cash book?

A. No, I will not say positive that it was the cash book.

Q. What kind of a book was it?

A. Why, that——

The Court: This particular book that he is calling your attention to?

Q. Describe that book? Describe the book to the court?

A. The Court: Describe the book to the witness.

Q. Was that not a cash book, which was a solid book, and not a loose-leaf ledger, about, probably 17 inches long, containing
56 the cash transactions of that business, made either by those persons you referred to—made by those persons, day by day?

A. As I say, I can't say if it was a loose leaf cash book, or if it was a solid book.

The Court: What was its shape and form?

A. Just as he says: about that long (indicating).

The Court: How broad?

A. About that broad (indicating).

The Court: How thick?

A. About an inch or an inch and a half.

Q. Was it not such a book as this? (indicating) loose-leaf ledger.

A. I don't know——

Q. I mean, a book of the size and shape of that?

A. No, sir.

Q. There is no other book of the size and shape of that one in that office?

A. I don't know.

Q. You never saw any?

A. No, not to my knowledge.

Q. Mr. Kramer, didn't you swear before the grand jury in this matter that this cash book to which you referred, contained the receipts—the daily receipts from customers, upon one side, and the disbursements of cash upon the other side?

A. The way I said it was, I thought——

Q. No, did you say that?

A. No, I don't think I did.

Q. Well, you say you thought it was what?

A. I thought there was a debtor and creditor side, on each side of the cash book, as you say,—because I am studying bookkeeping myself,—that is the way I thought it was operated under that plan, because I know books operating like that.

57 Q. That is, upon one side there was a credit account, and upon the other page a debit?

A. That is the way I thought.

Q. A whole page devoted to the debtor, and one to the creditor?

A. That is the way I have my books there.

Q. No, I don't mean your books—I mean that book, you saw those people writing in?

A. I don't know.

By the COURT:

Q. What did you tell the grand jury?

A. I said the entry—they entered sheets of paper in this here book—I mean, items from sheets of paper in this here book, which I saw.—That is what I told them—which I saw them enter from sheets of paper—items into this here book.

Q. You saw items taken from sheets of paper and carried into the book?

A. Yes.

Q. By these men you have mentioned?

A. Yes.

Q. That was a book such as you saw, which you say had charges on one side and credits on the other?

A. Well, that I cannot say.

Q. Well, what did you mean when you said that?

A. Well, I don't know if it—if they had it on just one page a debtor and credit side, or on just one leaf.

Q. What made you believe it was a book of that kind?

A. Well, as I used a debtor for one page and a creditor for the other page myself.

Q. You saw this book?

A. Yes.

58 Q. Did you see that?
A. Yes.
Q. You say that it was a debit on one side and credit on the other side?
A. There was items on both sides of the page.
Q. Now repeat again, or try to recall and repeat, just what you told the grand jury?
A. In what questions?
Q. About that book.
A. Well, I says that the entries in this book, which I see, were made from slips of paper.
Q. Is that all you told the grand jury?
A. No, I told them a great deal of questions more, but not concerning the cash book.
Q. Your memory is good, is it not?
A. Yes, as far as I know.
Q. Is it not very long since you were examined there?
A. No, sir, they didn't ask me very many questions about the cash book.

The COURT: Direct his attention to anything further you desire him to testify to.

By Mr. DARBY:

Q. Mr. Kramer, I want to ask you if you did not testify to the grand jury, that this cash book, referred to, and which you were then testifying about, contained upon one side the cash items as they were paid into that office, and upon the other side, the cash items as they were disbursed?
A. I will say I did.
The COURT: What is it?
A. I did.

59 Cross-examination.

By Mr. SHAY:

Q. Mr. Kramer, you say that you are studying bookkeeping?
A. Yes.
Q. You saw the books in this office? When was the last time you saw that book?
A. I think it was Monday—Saturday or Monday.
Q. Now, are you able to say, of your own knowledge, that you ever read any items in that book?
A. No, sir.
Q. Do you know whether or not it was a cash book, or are you guessing, or coming to a conclusion of that character?
A. No, sir; I don't say it was a cash book; under what name it went, I don't know.
Q. Nor what it contained you don't know?

A. Nor what it contained, nor these items that these gentlemen entered.

Q. You saw them writing from slips?

A. Slips, yes.

Q. What the slips contained, you don't know?

A. I don't know.

Q. How long ago did you—or can you remember any one time that you ever saw Mr. Ballman use that?

A. I cannot designate the right time, the time when he did that—it has been a long time.

Q. How long ago?

A. I venture to say, about six or seven months.

Q. You have never seen him, at any time since that, use the book?

A. No, sir.

Q. Would you be able to swear that the book you saw Mr. Ballman using or writing upon, was the same book that you saw in the office on last Monday?

60 A. I can.

Q. You think it was?

A. I think it was.

Q. Your duties call you, you say, outside of the office?

A. Outside of this here partition, yes, sir.

Q. And you are there actively engaged throughout the day?

A. Throughout the day.

Q. You haven't anything to do with the clerical department?

A. No, sir.

61 Also, ELMER S. HUNT, being called by the Government and duly sworn, testified as follows:

By Mr. DARBY:

Q. Where do you live?

A. 2403 Colerain (?) street.

Q. Are you engaged in business with Mr. Ballman?

A. I am.

Q. Are you an employé of his?

A. I am.

Q. What is your business in that office?

A. I receive telephone orders and collect money.

Q. Will you state whether or not recently, in the conduct of Mr. Ballman's business, there has been used a cash book?

A. I cannot.

Q. Why not?

A. Because I don't know.

Q. Do you swear to his honor that you do not know that a cash book was used in that business?

A. I do.

Q. Did you not testify before the grand jury last night, at six

o'clock, that there was a cash book used in that business, and that you saw it a week or ten days ago?

A. I said that there was one, but I hadn't seen it for some time, I didn't know just when I had seen it last.

Q. Didn't you testify that you had seen it a week or ten days before last night?

A. No. I don't think I did.

Q. How long ago did you see that cash book?

A. I couldn't say positive.

62 Q. About how long ago?

A. I can't say whether it has been a week or two weeks or three weeks.

The COURT: Give us your best recollection about it. Fix some time. You can fix some time.

A. I can't fix the time.

The COURT: Oh, yes, you can,—you know whether it was this year or last year?

A. Oh, it has been since the first of the year.

Q. Has it been since the office was removed to the Carew building?

A. I think so.

Q. You know that, don't you? And didn't you testify before the grand jury that it was since Mr. Ballman removed from Third street to the Carew building—didn't you testify to that last night, at six o'clock, when you were before the grand jury?

A. I testified that I saw it.

Q. That you saw it in his office in the Carew building?

A. Well, I don't know. You fellows had me so mixed up in there I——

The COURT: Just answer the questions.

A. I believe I did say something like that.

The COURT: Then why do you hesitate to tell it?

A. I was trying to think whether I said it or not.

The COURT: It will — better for you to make frank answers to these questions.

Q. You removed — that office in the Carew building from Third street on or about the 13th day of March—about three weeks ago?

A. Just about.

Q. Now, on Wednesday and Thursday of this week, you were the acting bookkeeper in that office?

63 A. Thursday and Friday.

Q. The 6th and 7th of April. At that time, this book which is now open before his honor, this ledger (indicating) was in your possession, was it not?

A. It was there in the office.

Q. Yes, you had——

A. I had access to it.

Q. And you made entries in it on the 5th and 6th or on the 6th, of April. Now, I will ask you if you did not make entries here

which show, under the word "folio," the numbers of the pages in the cash book?

A. They are number of the pages on the cash slips—not the cash book.

Q. Where was the cash book?

A. I don't know.

Q. Where did you get these numbers?—they follow serially?

A. I took them from the sheet of the day before.

Q. You say that these cash sheets had the numbers of the folios, the folio number upon them?

A. They have folio numbers upon them, yes.

Q. Then these sheets that you were using, you did not keep for any purpose?

A. No, sir.

Q. The system of copying from the sheets into the cash book, and from the cash book into the ledger, have been in vogue for how long a time?

A. I should think for about three or four months.

Q. That had been going on, and you put down here, opposite an entry on the 5th, a folio number, that number, 385?

A. Of the cash slip.

The COURT: What word is used there?

64 Q. The word "folio."

The COURT: What did you use the word "folio" for?

A. "Folio" used in the book, there is a line ruled off, with "folio" at the top—a line ruled off for it there, and I placed it there.

Cross-examination.

By Mr. SHAY:

Q. At the time you made those entries, Tuesday and Wednesday last, you had no cash book in the office—no cash book in your possession?

A. I had not, I didn't see any.

Q. You hadn't seen any cash book for a week past or more?

A. I don't think I had; I don't think I saw any this week.

Q. You have no knowledge that Mr. Ballman ever saw any cash book?

A. I have not.

65 Also, GEORGE F. DIETERLE, being recalled, testified as follows:—

By Mr. MCPHERSON:

Q. Mr. Dieterle, I wish you to state to the court what answer Mr. Clements made to this question, when I asked him—when I put it to him last night, and asked all the jurors present to listen to it carefully and remember it,—when I said to him, "Mr. Clements—then,

Mr. Clements, the cash book that you say you saw on April 3rd, in the office of John W. Ballman, upon one side contained all of the names—the cash received that day, and upon the other side the name of the person and the amount of cash received, I mean; upon the other side it contained the name of the person and the amount of any cash disbursed," and if he did not answer that, "Yes, that is correct?"

Mr. SHAY: I object to the question. My first objection is that it is incompetent and irrelevant; further, my objection is, that he is introducing the witness Clements as his own witness. My objection is further, that the witness cannot be impeached in that way. My objection is further, that the defendant, John W. Ballman, is the person answering to the court, and we are not trying the credibility of the witness introduced by the Government, and it cannot have any effect as to this, one way or the other.

The COURT: What was Mr. Hunt's relation there?

Mr. MCPHERSON: He was also a clerk in the office.

The COURT: Clements and Hunt were both clerks there.

66 Mr. MCPHERSON: Your honor, upon consultation, I will withdraw that question.

Mr. DARBY: Your honor, we want now to introduce two pages of this book, and exhibit them, to show the manner in which this record was kept, without any more than simply looking at the number of the account and the cash entries.

Mr. SHAY: We object to it.

Mr. DARBY: He will introduce these now, and furnish copies of the pages. Copies are hereto attached marked Exhibits "H" and "I."

Mr. SHAY: It is admitted under the same ruling of your honor.

The COURT: Yes.

Mr. SHAY: Then we will reserve our exception.

The COURT: Very well.

Mr. SHAY: If the court please, I desire now to ask that John W. Ballman be discharged for the reason, first, that there is no legal charge preferred against him; secondly, because there is no legal testimony offered by which he can be found guilty of any offense.

The COURT: This charge is contempt in refusing to answer certain questions and to produce a certain book.

Mr. SHAY: Yes, as to the book, we say to your honor we
67 haven't got it. As to the two questions, Mr. Ballman requests me to place this in your honor's hands. (Handing paper to the court.) There is no evidence that the defendant had any book in his possession at any time since this inquest was instituted.

(The paper so placed in the hands of the court reads as follows: "As to the questions asked, I refuse to answer, as they might tend to criminate me.")

The COURT: He declines to answer the questions because it might incriminate him?

Mr. SHAY: Yes, sir.

The COURT: When the questions themselves, show, in the connection in which they are asked, or tend to show any reason why they might incriminate him in any way, his privilege will be respected; and where it fails to show that, where apparently, it is utterly inconsistent with any suggestion of crime, there must be something more than this bare statement or claim to support his right to the exercise of the privilege.

Mr. SHAY: That question I would be glad to argue to your honor if you can give us a little time.

The COURT: Mr. Ballman is not charged with any crime; he is simply summoned as a witness to testify to facts pertinent to the inquiry being made by the grand jury. Now, in view of the
68 case that has been presented, if the court can see that in any way it might tend to incriminate him about anything, the court would respect the privilege; but I fail to see anything here—there is nothing suggested in the questions, or in any surroundings, that would indicate in any way anything of that kind to the mind of the court.

Mr. SHAY: I have always understood the rule to be that while it might not appear to the court, that it might appear to himself; and that after he has availed himself of that privilege, it is not in the power of the court to question it,—that he himself is the judge of that.

The COURT: Yes, he is the judge, but where all the circumstances and surroundings refute the truth of the suggestion, the court is not bound to accept his statement. You have evidance to offer, Mr. Ballman?

Mr. SHAY: No, sir.

The COURT: Then I will hear your argument, Mr. Shay.

Mr. MCPHERSON: Before the case is closed, as a matter of record, we desire to introduce in evidence and file the return of the summons, showing him legally served with subpœna.

(Said paper is marked "Exhibit F" and copy attached.)

(Counsel for respondent also offer in evidence the written reason given by John W. Ballman for refusing to answer certain questions, which paper is marked "Exhibit G" and copy attached.)

69 And the foregoing was all of the evidence at said hearing, and thereupon the court entered its judgment and order as appears of record and orders this certificate to be filed as part of the record, which is accordingly done.

A. C. THOMPSON, Judge.

The following are the exhibits referred to in said bill of exceptions and attached thereto.

EXHIBIT "F."

SOUTHERN DISTRICT OF OHIO, Western Division, } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

We command you to summon John W. Ballman to bring cash book, ledger, letter press copy books & all sheets showing transactions under the name of A. Smith & A. Johnson during months of Dec. 1904 & Jan. & Feb. 1905 of —— county of —— district and State aforesaid, if he be found in your district, to be and appear before the judge of the district court of the United States, for the southern district of Ohio, at Cincinnati, Ohio, *on the* forthwith, to give testimony on behalf of the United States before the grand jury, and the truth to say on such matters as may be then and there required, and not depart without the leave of the court or the district attorney.

And have you then and there this writ.

Witness, the Honorable Albert C. Thompson, judge of the United States district court, this 7 day of April 1905 in the 129th year of the Independence of the United States of America.

Attest: B. R. COWEN, Clerk,
[SEAL.] By ROB'T C. GEORGI, Deputy.

[Endorsed:] Marshal's criminal docket # 4536. United States district court, southern district of Ohio, western division. Subpœna for grand jury witness. April term 1901, forthwith. Filed Apr. 8, 1905. B. R. Cowen, clerk. S. McPherson, U. S. att'y.

SOUTHERN DISTRICT OF OHIO, Western Division, } ss:

I received this writ at Cincinnati, at — o'clock — m., on the 7 day of April, 1905, and served the same by copy, as follows:

Personally on John W. Ballman at — o'clock, — m., on the 7 day of April, 1905.

VIVIAN J. FAGIN,
U. S. Marshal, S. D. O.,
Per J. F. GARDNER, Deputy.

Fees: 50c.

EXHIBIT "G."

As to the questions asked I refuse to answer, as they might tend to incriminate me.

70 EXHIBIT H.

Sheet No. 1. Account No. 140.

Name, Dominick & Dominick.
Address, c/o B. Ryon.

Date.	Item.	Folio.	Debit.	Balance.	Date.	Item.	Folio.	Credit.	Balance.
1905.					1905.				
Jan. 26	To C.....	349	1750		Feb. 2	By.....	350	4287 50	
	C.....	349	1500						
	C.....	349	1000						
27	C.....	349	500						
30	C.....	349	1000						
31	C.....	351	500 00						

71 EXHIBIT "I."

Account No. 26. Sheet No. 133.

Name, Geo. De Camp.
Address, ——.

Date.	Item.	Folio.	Debit.	Balance.	Date.	Item.	Folio.	Credit.	Balance.
1905.					1905.				
Apr. 1	To 4965.....		20		Apr. 1	By ret....	3	3 75	
	4975.....		20				382	56 25	
	4976.....		20		3	40 shares....		5	
3	750.....		60			4452.....		65	
	2033.....		60			4507.....		50	
	2360.....		60			4875[4786]		37 50	
	3647.....		60			4836.....		30	
	3416.....		60			4990.....		25	
	4461.....		50			4993.....		7 50	
	4703.....		25				382	425	
	4715.....		10						
	4733.....		10						
	4734.....		10						
	4757.....		50						
	4343.....		50						
	4873.....		20						
	4871.....		10						
	4990.....		20						
	4993.....		50						
	4998.....		20						
	5005.....		20						

72 EXHIBIT "J."

Sheet No. 27. Account No. 133.

Name, Geo. De Camp.
Address, ——.

Date.	Item.	Folio.	Debit.	Balance.	Date.	Item.	Folio.	Credit.	Balance.
1905.					1905.				
Apr. 4	To 1052		20		Apr. 4	By 50 shares		6 25	
	4299		20			4390		125	
	750		10			4450		85	
	2033		10			4965		26 25	
	2360		10			4975		22 50	
	3366		10				382	35	
	3569		10		5	4950		22 50	
	3647		10			5027		23 75	
	3416		20			5056		25	
	4461		20			30 shs		3 75	
	4715		10			C	384	45	
	4757		20		6	40 shs		5	
	4343		20			4460		62 50	
	4998		10			4490		62 50	
	5014		20			4495		67 50	
	5027		20			4520		43 75	
	5030		20			4793		46 25	
	5037		40						
5	1052		20						
	3366		10						
	4998		10						
	5005		20						
	5058		20						
	5056		20						
	5072		20						
				45					
6	1052		60						
	4299		20						
	2258		20						
	3366		30						
	4877		20						
	5090		20						
	5097		40						
	6007		20						
	C	385	57 50						

73 And afterwards, to-wit: on the 12th day of April, A. D. 1905 a certificate was filed in the clerk's office of said court clothed in the words and figures following, to-wit:—

Certificate of Judge Thompson and Exhibits.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of JOHN W. BALLMAN. No 1840.

Be it remembered, that on April 10th, 1905, the grand jury presented to the court the report which is hereto attached marked Exhibit No. 1, and reported that said John W. Ballman had made to said questions and demand the answers hereto attached marked Exhibit No. 2, and that Exhibit No. 3 hereto attached is the copy of the petition in the case of Oppenheimer produced by said Ballman and referred to in his said answer.

And thereupon the court without hearing further or other evidence made and entered the judgment as appears of record.

And it is ordered that this certificate be filed as part of the record which is accordingly done.

A. C. THOMPSON, Judge.

EXHIBIT No. 1.

To the Honorable A. C. Thompson, judge U. S. district court, S. D. O.

DEAR SIR: The grand jury for the April term, 1905 reports that John W. Ballman, appeared as a witness before this body April 10th, 1905 at 1:30 o'clock p. m. and failed and refused to produce the cash book referred to in your honor's order of April 8th,
74 1905, said witness also refused to answer the questions as specified in the charges against him and referred to in said order of court.

Respectfully, GEORGE F. DIETERLE, Foreman.

EXHIBIT No. 2.

I have not now, and neither at the time of nor at any time since the service of the first subpœna upon me in this matter have I had in my possession or under my custody or control the book referred to in the order of the court entered on April 8th, 1905, or any book showing transactions under the name of A. Smith or A. Johnson, and am unable to produce the same.

I decline to answer the questions contained in said order of April

8, 1905, on the ground that it might tend to criminate me, and in this connection I produce copy of a petition filed against me and others by Emanuel Oppenheimer in the court of common pleas of Hamilton county, Ohio, being case No. 126,824, and I state that there are many other actions of the same kind pending against me.

EXHIBIT No. 3.

Court of Common Pleas, Hamilton County, Ohio.

EMANUEL OPPENHEIMER, Plaintiff,
vs.
THE O'DELL COMPANY, a Corporation Organized under the Laws of Ohio; William J. O'Dell, George H. Stapeley, John M. Gorman, William C. Dudley, L. W. Foster, John W. Ballman, Thomas F. Shay, William W. Douglass, C. J. O'Dell, Mabel A. Stapeley, and Louise O'Dell, Defendants.

75 The plaintiff, Emanuel Oppenheimer, says

That the defendant, The O'Dell Company is a corporation organized under the laws of Ohio, and that from the 25th day of May, 1903 to the date thereof, in the city of Cincinnati, Ohio, it conducted a scheme of gambling known as a "bucket shop."

That the defendants, William J. O'Dell, George H. Stapeley, John M. Gorman, William C. Dudley, L. W. Foster, John W. Ballman, Thomas F. Shay. William W. Douglass, C. J. O'Dell, Mabel A. Stapeley, and Louise O'Dell, are interested in said scheme of gambling as officers, stockholders, owners, venders and agents thereof, and otherwise. Plaintiff further says that the defendants are indebted to him in the sum of one thousand four hundred and fifty and 37/100 dollars for money expended by him and paid to the defendant between the dates of May 25, 1903, and the date hereof. That the said moneys were expended by the plaintiff in and on account of the scheme of chance and in and on account of the scheme of gambling maintained and conducted by the defendant The O'Dell Company.

That said sum of one thousand four hundred and fifty and 37/100 is the aggregate losses above the winnings which were incurred by the plaintiff by means of bets and wagers upon the market prices of stocks, grains and other commodities made between the plaintiff and the O'Dell Company continuously and almost daily between the dates of May 25, 1903, and the date hereof. That the said series of bets and wagers upon stocks, grains and other commodities constituted the scheme of gambling and chance known as the "bucket shop," above mentioned. That the said sum was won by the O'Dell Company and was paid to it by the plaintiff and was received
76 from the plaintiff by the O'Dell Company. That by reason thereof an action has accrued to plaintiff by virtue of the statutes against gaming in the State of Ohio.

Wherefore the plaintiff prays for judgment against the defendants in the sum of one thousand four hundred and fifty and 37/100 dollars and for exemplary damages in the sum of five hundred dollars and for his costs herein, and for all other and proper relief.

CABELL & FREIBERG AND
MOULINIER, BETTMAN & HUNT,
Attorneys for Plaintiff.

STATE OF OHIO, Hamilton County, } ss:

A. J. Freiberg, being first duly sworn says that he is the attorney for Emanuel Oppenheimer, plaintiff in the above cause, and that the plaintiff is not a resident of Hamilton county, Ohio, and that the facts stated in the above petition are true to the best of the knowledge and belief of the affiant.

A. J. FREIBERG.

Sworn to, &c.

——, ——.

THE UNITED STATES OF AMERICA, Southern District of Ohio, Western Division, } ss:

I, Benjamin R. Cowen, clerk of the district court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause as the same appears of record and on file in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Cincinnati, Ohio, this 12th day of April, A. D. 1905.

[SEAL.]

B. R. COWEN, Clerk,
By ROBERT C. GEORGI,
Deputy Clerk.

77 And afterwards, to-wit: on the 12th day of April A. D. 1905, and entry was made upon the journal of said court, clothed in the words and figures, following, to-wit:

Entry Journal 8, page 33.

This cause came on this day to be heard and was argued by counsel and submitted to the court.

And afterwards, to-wit: on the 13th day of April A. D. 1905, an entry was made upon the journal of said court, clothed in the words and figures following, to-wit:

Entry Journal 8, page 34.

This proceeding came on to be heard upon the petition for writ of *habeas corpus*, the answer thereto, the reply of the petitioner, and the evidence, including the record of the proceedings of the district court of the United States for the southern district of Ohio, western division, in the matter of John W. Ballman for contempt, No. 1840, and was argued by counsel and submitted to the court. On consideration whereof, the court dismisses said petition and remands the petitioner to the custody of the marshal. To all of which the petitioner excepts.

And afterwards, to-wit: on the 14th day of April A. D. 1905 a petition for appeal and assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following:

Petition for Appeal and Assignment of Errors.

78 Circuit Court of the United States, Southern District of Ohio, Western Division.

In the Matter of JOHN W. BALLMAN. No. 6007.

Petition for Appeal and Assignment of Errors.

John W. Ballman prays an appeal to the Supreme Court of the United States from the order and judgment of this court dismissing his petition for writ of *habeas corpus*, and assigns as error that this court has erred

1. In holding that the orders of the district court entered April 8th and 10th, 1905, refer to the cash book testified about by witnesses who testified at the hearing on April 8th, and that said orders are not confined to a book containing transactions in the name of A. Smith or A. Johnson.

2. In holding that there was any legal evidence to sustain the order of April 8th.

3. In holding that the order of April 7th was not in contravention of the fourth amendment of the Constitution of the United States.

4. In holding that there was any evidence before the court to show the existence on or after April 7th of the book testified to by witnesses at the hearing on April 8th.

5. In holding that the petitioner was required on said hearing to account for the loss or destruction of said book prior to April 7th.

6. In holding that the petitioner was required to answer
79 said questions notwithstanding his claim of privilege.

7. In holding that said orders and judgments of the district court and each of them were not beyond the lawful power and authority of said court and in contravention of the Constitution of

the United States, especially of the fourth and fifth amendments thereof.

8. In holding that the said orders and commitment of the district court were not void for indefiniteness and uncertainty because of the indeterminate punishment thereby inflicted upon your petitioner.

9. In dismissing said petition for writ of *habeas corpus*.

LAWRENCE MAXWELL, JR.,
MILLER OUTCALT,
THOMAS F. SHAY,
Counsel for Ballmann.

And afterwards, to-wit: on the 14th day of April A. D. 1905, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 8, page 34.

On consideration of the petition of John W. Ballman for an appeal to the Supreme Court of the United States, it is ordered in open court that an appeal to the current session be, and the same hereby is, allowed, upon condition that the said petitioner shall file a transcript of the record in this case in the Supreme Court of the United States on or before April 24th, 1905.

And it is further ordered that said Ballman, pending said appeal, may be enlarged upon executing a recognizance, with sureties in the sum of five thousand dollars ($5,000.00), to the satisfaction of the clerk of this court, for his appearance to answer the judgment of the Supreme Court of the United States in this cause.

80 And afterwards, to-wit: on the 14th day — April A. D. 1905, a recognizance was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Recognizance.

THE UNITED STATES CIRCUIT COURT, Southern District of Ohio, Western Division, } ss:

We, John W. Ballman, and Robert J. O'Brien and George H. Yeager, jointly and severally acknowledge ourselves indebted to the United States of America in the sum of five thousand dollars, lawful money of the United States of America, to be levied on our and each of our goods, chattels, lands and tenements upon this condition.

Whereas the circuit court of the United States for the southern district of Ohio, western division, has allowed the appeal of said John W. Ballman to the Supreme Court of the United States from

the order of said circuit court dismissing his petition for a writ of *habeas corpus*, and has ordered that pending said appeal said Ballman may be enlarged upon executing a recognizance, with sureties, in the sum of five thousand dollars, to the satisfaction of the clerk of said court, for the appearance of said Ballman to answer the judgment of the Supreme Court of the United States on said appeal;

Now if the said Ballman shall appear in said circuit court to answer the judgment of the Supreme Court of the United States upon said appeal, and shall abide by and perform any judgment or order which may be rendered by said Supreme Court of the United States on said appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 14th day of April, 1905.

JOHN W. BALLMANN.
ROBERT J. O'BRIEN.
G. H. YEAGER.

Taken and approved this 14th day of April, 1905, before me.

[SEAL.]

B. R. COWEN,
Clerk U. S. C. C., S. D. O.,
By ROBERT C. GEORGI, Deputy.

81 THE UNITED STATES OF AMERICA, Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause as the same appears of record and on file in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Cincinnati, Ohio, this 19th day of April A. D. 1905.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, Clerk,
By ROB'T C. GEORGI,
Deputy Clerk.

82 THE UNITED STATES OF AMERICA, *ss:*

To The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days, pursuant to an appeal allowed by the circuit court of the United States for the southern district of Ohio, western division, from an order of said court dismissing the

petition of John W. Ballman for a writ of *habeas corpus*, to show cause, if any there be, why the judgment in the said proceeding mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 14th day of April in the year of our Lord one thousand, nine hundred and five.

HORACE H. LURTON,
Circuit Judge.

Service acknowledged April 14, 1905.

SHERMAN T. McPHERSON,
United States Attorney, S. D. O.

[Endorsed:] United States circuit court, S. D. O., W. D. No. 6007. In the matter of John W. Ballmann. Citation on appeal. Filed April 14th, 1905. B. R. Cowen, clerk.

Supreme

83 [Endorsed:] No. —. United States circuit court, southern district of Ohio, western division. John W. Ballman, appellant, *vs.* The United States of America, appellee. Transcript. —— —— attorneys.

Endorsed on cover: File No. 19,727. S. Ohio C. C. U. S. Term No. 627. John W. Ballmann, appellant, *vs.* Vivian J. Fagin, United States marshal for the southern district of Ohio. Filed April 24th, 1905. File No. 19,727.